

Application Serial Number 10,534,765  
Response to Office Action  
Dated July 24, 2006

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### REMARKS / DISCUSSION OF ISSUES

Claims 1-15 are presently pending. Claims 10-15 are new. No new claim fees are believed necessary. Claims 1 and 10 are in independent form.

#### **Objections to the Specification**

The objections to the specification have been considered. The undersigned had difficulty determining from the USPTO 'PAIR' site, the disposition of the Abstract in the specification as filed. Thus, by the present amendment to the specification, an abstract is provided for inclusion on page 12, which is the next page after the last claim as filed.

#### **Objection to the Claims**

The objections to claim 1 has been considered. The Examiner asserts that the term 'capable of' is not a positive limitation. Applicants respectfully submit that this term is a positive limitation. For example, there are materials that have a certain capability and those that do not. One skilled in the art would readily appreciate this and thus understand that the term is a positive limitation. Moreover, the Examiner has provided no basis for the objection to this term. Without such precedent, Applicants respectfully submit that the present objection is improper.

The objection to the use of the terms subjecting and polymerizing in claim 1 is respectfully traversed. Notably, there is no basis provided for the objection to these terms, other than the unsubstantiated assertion that these connote a method of forming a product. Respectfully, Applicants submit that without clear recitation of the basis in law or rule as to the impropriety of these terms in claim 1, this objection is improper. Thus, without more, Applicants submit that the objection is improper and should be withdrawn.

#### **Rejections Under 35 U.S.C. § 102**

Claims 1-4 are rejected under 35 U.S.C. § 102(b) as being unpatentable over *Shlota, et al.* (U.S. Patent 5,773,178). For at least the reasons set forth herein, Applicants respectfully submit that this rejection is improper and should be withdrawn.

Application Serial Number 10,534,785  
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A proper rejection of a claim under 35 U.S.C. § 102 requires that a **single prior art reference disclose each element of the claim**. *See, e.g., W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303, 313 (Fed. Cir. 1983). **Anticipation requires that each and every element of the claimed invention be disclosed in a single prior art reference**. *See, e.g., In re Paulsen*, 30 F.3d 1475, 31 USPQ2d 1671 (Fed. Cir. 1994); *In re Spada*, 911 F.2d 705, 15 USPQ2d 1655 (Fed. Cir. 1990). Alternatively, anticipation requires that **each and every element of the claimed invention be embodied in a single prior art device or practice**. *See, e.g., Minnesota Min. & Mfg. Co. v. Johnson & Johnson Orthopaedics, Inc.*, 976 F.2d 1559, 24 USPQ2d 1321 (Fed. Cir. 1992). **For anticipation, there must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention**. *See, e.g., Scripps Clinic & Res. Found. v. Genentech, Inc.*, 927 F.2d 1565, 18 USPQ2d 1001 (Fed. Cir. 1991). (Emphasis added in each instance.)

Claim 1 is drawn to an optically anisotropic body and features "...*subjecting the polymerizable electro-optical and/or magneto-optical material to a non-uniform electric and/or magnetic field to establish electric and/or magnetic field lines in accordance with a desired pattern within the electro-optical and/or magneto-optical material...*"

Claim 10 is drawn to a method and includes a similar feature.

The applied art discloses the application of an AC electric field to provide molecular orientation/alignment of a liquid crystal monomer having negative dipole anisotropy. The alignment parallel or perpendicular to a particular direction is predicated upon the applied frequency of the applied electric field. However, there is no teaching or suggestion that the field applied is non-uniform as specifically recited in claims 1 and 10. Applicants submit that one of ordinary skill in the art would concur that the application of a non-uniform electric and/or magnetic is different from applying a selected frequency E-field to provide a certain molecular alignment. Stated differently, there is no correlation between the uniformity of and electric field and the frequency thereof. Therefore, there is

Application Serial Number 10,534,765  
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**OCT 30 2006**

a clear difference between the features of claims 1 and 10 and the reference disclosure. (Kindly refer to column 4, line 34-column 5, line 36 of the reference to *Shiota, et al.* ).

For at least the reasons set forth above Applicants respectfully submit that the applied art fails to disclose at least one element of claims 1 and 10. Therefore claims 1 and 10 are patentable over the applied art. Moreover, claims 4-9 and 11-15 are patentable at least because of their dependence (direct or indirect) from claims 1 and 10, respectively.

### **Rejections Under 35 U.S.C. § 103**

The rejections under 35 U.S.C. § 103(a) have been considered. While Applicants by no means concede the propriety of these rejections, Applicants nonetheless note that the rejections under this section of the Code pertains to dependent claims 5-9. For at least the reasons set forth above, these claims are patentable over the applied art. Applicants do not waive their right to address the noted rejections under this section of the Code in further and future replies.

### **Conclusion**

In view the foregoing, applicant(s) respectfully request(s) that the Examiner withdraw the objection(s) and/or rejection(s) of record, allow all the pending claims, and find the application in condition for allowance.

If necessary, the Commissioner is hereby authorized in this, concurrent, and further replies to charge payment or credit any overpayment to Deposit Account Number 50-0238 for any additional fees, including, but not limited to, the fees under 37 C.F.R. §1.16 or under 37 C.F.R. §1.17.

If any points remain in issue that may best be resolved through a personal or telephonic interview, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

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